

TARIFF ACTION MEMORANDUM

To Commissioners:

Robert M. Pickett, Chairman
Stephen McAlpine
Antony G. Scott
Daniel A. Sullivan
Janis W. Wilson

Date: April 7, 2020
Date Filed: March 4, 2020
45-Days Ends: April 20, 2020

From: Julie C. Vogler, Utility Financial Analyst

Subject: TA316-4 Third Amendment to the Gas Sales Agreement between Alaska Pipeline Company and Furie Operating, LLC

Recommendation

Staff recommends the Commission approve the Third Amendment to the Gas Sale and Purchase Agreement between Alaska Pipeline Company and Furie Operating Alaska, LLC, filed with TA316-4 on March, 4, 2020, effective April 20, 2020.

Signed: Julie C. Vogler Title: Utility Financial Analyst
Julie C. Vogler

Commission decision regarding this recommendation:

	Date (if different from 4/07/20)	I Concur	I Do Not Concur	I Will Write A Dissenting Statement *
Pickett	_____	<u>RMP</u>	_____	_____
McAlpine	_____	<u>SM</u>	_____	_____
Scott	_____	<u>AGS</u>	_____	_____
Sullivan	_____	<u>DS</u>	_____	_____
Wilson	<u>04/08/20</u>	<u>JW</u>	_____	_____

* If this column is initialed, Staff will contact the Commissioner for the statement; otherwise, the dissent will simply be noted at the close of the By Direction Letter Order

M E M O R A N D U M

To Commissioners:

Robert M. Pickett, Chairman
Stephen McAlpine
Antony G. Scott
Daniel A. Sullivan
Janis W. Wilson

Date: April 7, 2020

From: Julie C. Vogler, Utility Financial Analyst

Subject: TA316-4 Third Amendment to the Gas Sale Agreement between Alaska Pipeline Company and Furie Operating Alaska, LLC

Recommendation

Staff recommends the Commission approve the Third Amendment to the Gas Sale and Purchase Agreement between Alaska Pipeline Company and Furie Operating Alaska, LLC, filed with TA316-4 on March 4, 2020, effective April 20, 2020.

Notice

The Commission publicly noticed TA316-4 on March 6, 2020, with a comment period ending April 6, 2020. The Commission received no comments.

Background

TA282-4

On March 14, 2016, ENSTAR filed TA282-4, requesting Commission approval of a gas sale and purchase agreement (GSA) between Alaska Pipeline Company (APC)¹ and Furie Operating Alaska, LLC (Furie GSA). ENSTAR also requested Commission approval to recover the costs associated with the Furie GSA through its Gas Cost Adjustment (GCA) by including the Furie GSA in Section 708e² and Section 2301³ of its tariff. The Commission approved the Furie GSA, allowed the inclusion of costs associated with the Furie GSA to be recovered as a new cost element in the calculation of ENSTAR's

¹ The Commission has historically regulated APC and ENSTAR Natural Gas Company as a single entity.

² Tariff Sheet No. 89.

³ Tariff Sheet No. 221.

GCA, approved Tariff Sheet Nos. 89 and 221, and found that approval of the Furie GSA was consistent with AS 42.05.141(d).⁴

TA296-4

On September 25, 2017, ENSTAR filed TA296-4, requesting approval of an amendment to the original Furie GSA (Amendment No. 1). In Amendment No. 1, Furie and ENSTAR agreed, amongst other things, to the following:

1. The exercise date defined in Section 1.1 was changed from April 1, 2018 to April 1, 2019.
2. Furie failed to meet the conditions precedent in Section 13.3(b); therefore the gas sales price fell under the pricing provisions established in Sections 3.1(c) and 3.1(d).⁵
3. Extend the deadline in Section 13.3(b) from December 31, 2016 to July 31, 2018.
4. Extend the deadline to file a Reserves Report and Engineer's Opinion Letter from on or before 30 days prior to April 1, 2018 to October 31, 2018.⁶
5. Amendment No. 1 would be effective November 30, 2017 as long as certain conditions were met.⁷

The Commission approved Amendment No. 1 on October 31, 2017.⁸

TA315-4

On November 14, 2019, ENSTAR filed TA315-4, requesting approval of the Second Amendment to the Furie GSA (Amendment No. 2). ENSTAR and Furie agreed to remove and revise several definitions found in Section 1.1,⁹ amend Article 2- Sale and Purchase of Gas,¹⁰ amend Article 3- Price/Cost Allocation, and amend and add new sections and miscellaneous provisions. The following provisions are relevant to the review and discussion of Amendment No. 3 filed with TA 316-4.

⁴ Letter Order No. L1600193, dated April 25, 2016.

⁵ Staff notes that Amendment No. 1 did not change the pricing provisions of the Furie GSA, as the approved GSA established the pricing if Furie did not meet the conditions precedent.

⁶ Section 2.10(e)(i) and (ii) of the original Furie GSA.

⁷ ENSTAR indicated that the conditions were met and therefore, Amendment No. 1 became effective November 30, 2017. See TA315-4 at page 2.

⁸ Letter Order No. L1700450.

⁹ Amendment No. 2 at pages 1-2.

¹⁰ Amendment No. 2 at pages 2-5.

Article 2-Sale and Purchase of Gas: As shown in the table below, Section 2.1a revised the Annual Contract Quantity (ACQ) during years 2 and 3 and added deliveries for contract years 4 and 5 of the extended term.¹¹

Contract Year	Beginning Date	Original ACQ (Bcf)	Amended ACQ (Bcf)
2	April 1, 2019*	6.194	1.138
3	April 1, 2020	6.194	3.650
4	April 1, 2021		3.103
5	April 1, 2022		2.373

*Firm deliveries will start on January 1, 2020.

As shown in the table below, Section 2.1b was amended to adjust the Firm Daily Contract Quantity (FDCQ) for years 2 and 3 and add FDCQ for years 4 and 5.

Contract Year	Beginning Date	Original FDCQ (MMcf/day)	Amended FDCQ (MMcf/day)
2	April 1, 2019*	10 (summer), 22 (winter) ¹²	12.5
3	April 1, 2020	10 (summer), 22 (winter)	10
4	April 1, 2021		8.5
5	April 1, 2022		6.5

*Firm deliveries of 12.5 MMcf per day began on January 1, 2020.

Article 3-Price/Cost Allocation: As shown in the table below, Section 3.1d was amended to remove pricing for Daily Call Option Gas and replace Emergency Gas with Discretionary Gas.

Volumes	Cost per Mcf	
	Contract Year beginning April 1, 2021	Contract Year beginning April 1, 2022
Firm Gas	\$6.71	\$6.85
Discretionary Gas	Not to exceed \$9.85	Not to exceed \$10.05

The Commission approved Amendment No. 2 on December 23, 2019.¹³

Force Majeure Event

In January 2019, Furie declared a Force Majeure due to freezing issues that caused blockages on its pipelines. On January 23, 2019, pursuant to Section 11.1(b) of

¹¹ Extended Term is defined as April 1, 2021 through March 31, 2023, in the definition section of the original Furie GSA.

¹² ENSTAR and Furie agreed to eliminate the option to purchase/sell Call Option Gas during the Winter Season, found in Section 2.2 of the original Furie GSA. TA315-4 at page 4.

¹³ Letter Order No. L1900468.

the original Furie GSA, Furie provided notice to ENSTAR, declaring a Force Majeure Event. As a result of the Force Majeure Event, Furie stopped deliveries of gas to ENSTAR on January 24, 2019. On February 11, 2019, ENSTAR issued a formal Default Notice to Furie. On April 25, 2019, Furie notified ENSTAR the Force Majeure Event had concluded.¹⁴ Staff notes in August 2019, following production and drilling challenges, Furie filed for Chapter 11 bankruptcy and proceedings continue to determine who will be the ultimate purchaser of Furie.

Filing

On March 4, 2020, ENSTAR filed TA316-4, requesting approval of a Third Amendment to the Furie GSA (Amendment No. 3). Amendment No. 3 is a result of ENSTAR and Furie entering into a settlement agreement resolving the Force Majeure Event. After conducting an investigation into the Force Majeure Event, ENSTAR agreed to enter into a compromise and settlement of its cover damages¹⁵ claim against Furie. TA316-4 included a tariff advice letter, the settlement agreement release and Amendment No. 3 to the Furie GSA (Attachment A), Furie's letter to ENSTAR declaring the force majeure event (Attachment B), ENSTAR's default notice to Furie (Attachment C), and the bankruptcy court order approving Furie's entry into the settlement agreement (Attachment D). In response to Staff's request ENSTAR supplemented TA316-4 on March 13 and 16, 2020.¹⁶ ENSTAR requested an effective date of April 20, 2020.¹⁷

Settlement Agreement

On February 13, 2020, ENSTAR entered in to a settlement agreement and release (Settlement) with Furie. Section 1 of the Settlement requires Furie to deliver to ENSTAR, via in-field transfer, 250,000 Mcf of gas (settlement gas volumes) valued at \$6.80 per Mcf for a total value of \$1,700,000. In addition, the Settlement specifies that the settlement gas volumes be delivered in 3 increments of 83,333.333 Mcf by the following dates:

¹⁴ Staff notes ENSTAR and Furie also executed Amendment No. 2 on April 25, 2019.

¹⁵ Staff notes that the cover damage provisions are found in Section 2.9 of the Original Furie GSA.

¹⁶ See TR2001916, Response to Staff Questions and TR19001952, Response to Staff Question No. 4.

¹⁷ ENSTAR requested the effective date be at the conclusion of the standard notice and review period, which is April 20, 2020.

January 31, 2020, February 10, 2020, and March 1, 2020.¹⁸ ENSTAR confirmed that Furie has delivered the Settlement Gas Volumes via in in ground transfer.¹⁹

ENSTAR noted the settlement gas volumes will be transferred from Furie's account in CINGSA to ENSTAR's account in CINGSA. ENSTAR further noted that the delivery of the settlement gas volumes, via storage balance transfer, is estimated to reduce the average cost of stored gas by more than \$0.55 per Mcf.²⁰ In response to Staff's request, ENSTAR provided Staff an excel workbook, with working formulas, to support the calculation of the \$0.55 per Mcf.²¹ Staff notes the reduction in the average cost of stored gas will be reflected in the Gas Cost Adjustment (GCA) filing that will be effective July 1, 2020.

Amendment No. 3 to the Furie GSA

Amendment No. 3 to the Furie GSA was signed by ENSTAR and Furie on February 13, 2020. Key provisions of Amendment No.3 are as follows:

Section I- Effective Date: Section I was added to include 5 conditions that must be met to be effective. Staff notes as of the date of filing Amendment No. 3, only one of the five conditions had been met.

1. The bankruptcy court has entered an order authorizing Furie to enter in to Amendment No. 3. ENSTAR indicated that the Bankruptcy court issued the Order on March 4, 2020, approving Furie's entry into the Settlement.²²
2. The bankruptcy court has entered an order authorizing Furie to assume the GSA. ENSTAR advised Staff it expects the order to be issued on or around May 4, 2020.²³

¹⁸ See Section 1 of the Settlement Attached to TA316-4.

¹⁹ See TR2001916, Response to Staff Questions, filed March 13, 2020.

²⁰ See FN 6 of the TA Letter Staff notes that although the settlement volumes had a monetary value noted, the volumes were transferred in to storage at a cost of \$0.00 per Mcf.

²¹ As requested by ENSTAR, Staff held the workbook as confidential workpapers pursuant to 3 AAC 48.040(b)(10), which states:

(b) The following records are confidential and are not open to inspection by the public unless they are released under 3 AAC 48.049 or court order or their release is authorized by the person with confidentiality interests:

(10) records of a regulated public utility, pipeline carrier, or pipeline submitted to or copied by the commission's advisory staff during any audit, review, or investigation in connection with any formal or informal proceeding;

²² See TA316-4 at 2.

²³ See TR19001952, Response to Staff Question No. 4, filed March 16, 2020.

3. Furie has assumed the GSA pursuant to the terms set forth in the order approving such assumptions. ENSTAR advised Staff, the expected date will be the date of the order (i.e. May 4, 2020).²⁴
4. The bankruptcy court has entered an order confirming Furie's plan of reorganization and that plan provides for Furie to continue its businesses after emerging from bankruptcy. ENSTAR advised Staff the expected date is on or around May 4, 2020.²⁵
5. The effective date of the plan has occurred. ENSTAR advised Staff that during a March 24 status hearing in Furie's bankruptcy proceeding, Furie reported that Kachemak Exploration LLC had terminated the Acquisition by Foreclosure Agreement. Furie further reported that discussions continue, including with Hex, LLC, and the parties hope to keep the May 4 date for confirmation of the Chapter 11 Plan.²⁶

Article 2- Sale and Purchase of Gas: As shown in the table below, Section 2.1a was amended and restated to adjust the annual contract quantities (ACQ) in Years 4 and 5.

Contract Year	Beginning Date	Second Amendment ACQ (Bcf)	Third Amendment ACQ (Bcf)
4	April 1, 2021	3.103	1.551
5	April 1, 2022	2.373	1.186

As shown in the table below, Section 2.1b was amended and restated to adjust the firm daily contract quantities (FDCQ) in years 4 and 5.

Contract Year	Beginning Date	Second Amendment FDCQ (MMcfd)	Third Amendment FDCQ (MMcfd)
4	April 1, 2021	8.5	4.25
5	April 1, 2022	6.5	3.25

Section 2.2 was deleted in its entirety and now includes a provision for right of first refusal (ROFR) gas. Specifically, in years 4 and 5, ENSTAR will have ROFR for any daily gas volumes up to an additional 4.25 Mmcfd and 3.25 MMcfd, respectively.²⁷ ENSTAR

²⁴ Id.

²⁵ Id.

²⁶ See TR2002299, Update to Staff Question No. 4, filed March 31, 2020.

²⁷ Staff notes these volumes are in addition to the FDCQ.

will have the first rights to these volumes and has the option say yes or no to the purchase of this gas.²⁸

Article 3- Price and Cost Allocation: As shown in the table below, Section 3.1 was amended and restated to include the pricing of the ROFR gas. Staff notes the price of the ROFR gas is the same as the price of firm gas, and the price of firm gas and discretionary gas remains the same.

Volumes	Cost per Mcf	
	Contract Year beginning April 1, 2021	Contract Year beginning April 1, 2022
Firm Gas	\$6.71	\$6.85
ROFR Gas	\$6.71	\$6.85
Discretionary Gas	Not to exceed \$9.85	Not to exceed \$10.05

Article 12- Creditworthiness: Section 12.1 was amended and restated to reduce the level of the irrevocable standby letter of credit, which is currently \$6 million, to the following amounts: April 1, 2020 - \$3 million; April 1, 2021 - \$2.5 million; and April 1, 2022 - \$2 million. ENSTAR advised Staff that Furie has already provided the letter of credit for contract year 2020.²⁹

Miscellaneous Provisions: Miscellaneous revisions include regulatory approvals, agreement remains in force, and counterparts/termination.

Tariff Sheet No. 221

ENSTAR's current approved Tariff Sheet No. 221 provides the calculation of the GCA, which includes the original Furie GSA that was already approved by the Commission as a base supply contract. As such, ENSTAR did not file a revised Tariff Sheet No. 221, as no revisions are necessary.

Conclusion

Based on the above discussion, Staff recommends the Commission approve Amendment No. 3, filed with TA316-4 on March 4, 2020, with an effective date of April 20, 2020.

Signature: 

Email: bob.pickett@alaska.gov

Signature: Stephen McAlpine
Stephen McAlpine (Apr 7, 2020)

Email: stephen.mcalpine@alaska.gov

Signature: 

Email: antony.scott@alaska.gov

²⁸ See TR2001916, Response to Staff Questions, filed March 13, 2020.

²⁹ Id

Signature: Dan Sullivan
Dan Sullivan (Apr 8, 2020)

Email: daniel.sullivan@alaska.gov

TA316-4 Third Amendment to the Furie GSA
April 7, 2020
7 of 7

Signature: 

Email: janis.wilson@alaska.gov